fulmen. However, a note of the intended acquisition of the land has been made upon the register document of title to the land under section 9(2) of the Act of 1960, and that clearly must have the effect of inhibiting any dealings with it. The order of the learned trial judge required the Registrar of Titles to expunge from the register any entries, such as would presumably have been made under section 23 of the Act of 1960, indicating that the land had been acquired or taken into possession by the State Authority, and the Federal Court did not interfere with that part of the order.

So the final result should be that the appeal and cross-appeal are dismissed, but that the orders of Mustapha bin Hussain J.C. and of the Federal Court are varied to the effect, (1) of deleting from paragraph (b) of the former order the words "such entries" in the antepenultimate and penultimate lines and by adding at the end of the paragraph the words "all entries relating to the intended acquisition of the said land made in pursuance of G.N. 89 dated March 30, 1972 and all entries relating to acquisition of the said land by the State Authority made under section 23 of the Land Acquisition Act 1960", and (2) by substituting for paragraph (c) of the former order a declaration that the applicants are entitled, as against the State Authority, to the said lands and to the possession thereof.

Their Lordships will advise His Majesty the Yang di-Pertuan Agong accordingly. The appellant must pay the respondents' costs of the appeal and cross-appeal. The appeal has failed and although the cross-appeal has been formally dismissed it has not added to the costs of proceedings before the Board, the respondents having for all practical purposes secured complete success upon the merits of the case. The respondents claimed that the Federal Court should have awarded them the costs of the proceedings there, instead of making no award to either party, but their Lordships are not disposed to interfere with the discretion of the Federal Court in that respect.

Order accordingly.

Solicitors: *Stephenson Harwood; Hatchett Jones & Kidgell.*

SINGAPORE REPORTS

JACK CHIA-MPH LTD. v. MALAYAN CREDIT LTD.

[C.A. (Wee Chong Jin C.J., Kulasekaram & Lai Kew Chai JJ.) April 19, 1984]

[Singapore – Civil Appeal No. 93 of 1982]

Practice & Procedure – Joint tenancy – Application for equal partition or sale – When court may grant order of sale – Supreme Court of Judicature Act (Cap. 15), First Schedule, para. 3.

Landlord & Tenant – Lease – Joint tenancy – Application for equal partition or sale – Exercise of court's powers in ordering sale – Supreme Court of Judicature Act (Cap. 15), First Schedule, para. 3.

On November 30, 1979 United Overseas Land Ltd. granted a lease on the 7th floor of Malayan Credit House to the appellants and the respondents. The lease was for a term of five years with an option to renew for two further terms of two years and three respectively. No words were added in the grant to indicate that the lessees were to take separate interests. By this lease the appellants and the respondents became joint tenants and each had an identical interest in the whole land and every part of it. After the lease was entered into the parties requested the lessor to render separate bills to each co-lessee in the same proportions and thereafter each party paid its agreed share of the rent directly to the lessor. Subsequently differences arose between the two parties which led to the appellants seeking an order for equal partition or for sale with equal division of the net proceeds of sale. In the court below the application was dismissed. The appellants appealed.

Held, allowing the appeal: having regard to the differences between the parties and the fact that each has an equal right to all parts of the 7th floor and neither may lawfully exclude the other from any part thereof, the *status quo* could not be maintained indefinitely and it was necessary and expedient for the court to order a sale in the exercise of its power under paragraph 3 of the First Schedule to the Supreme Court of Judicature Act (Cap. 15).

[**Editorial Note**: The respondents appealed to the Privy Council against the Court of Appeal's decision in Privy Council Appeal No. 33 of 1984. The decision of the Court of Appeal was varied by the Privy Council. The decision of the Board will be reported in the next issue of the *Journal.*]

Case referred to:

(1) *Williams* v. *Hensman* (1861) 1 John & H. 546; 50 E.R. 862.

COURT OF APPEAL.

Harry Elias (*Tan Joo Seng* with him) for the appellants.

M. Karthigesu for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the Judgment of the Court): On November 30, 1979 United Overseas Land Ltd. granted a lease of the 7th floor of a building known as Malayan Credit House to Jack Chia-MPH Ltd. and Malayan Credit Ltd. The lease was for a term of five years at the monthly rent of $7,696.00 and the monthly service charge of $2,960.00 with an option to the lessees for two further terms of two years and three respectively. No words were added in the grant to indicate that the leases were to take separate interests. The law is well settled that by this lease Jack Chia-MPH Ltd. ("the appellant company") and Malayan Credit Limited ("the respondent company"), became joint tenants and that each had an identical interest in the whole land and every part of it. The interest of each was the same in extent, nature and duration and this being a leasehold interest, the possession was vested in both, none holding any part to the exclusion of the other and the interest of each vested at the same time. They had unity of title, interest, possession and time (see 32 *Halsbury's* Laws of England, 3rd edn. para. 517).

Under Singapore law a joint tenancy can be severed at law so as to create a tenancy in common. This was the position in England before the Law of Property Act 1925 (15 Geo. 5 e.20). In *Williams* v. *Hensman*[1] Sir W. Page Wood, V.C., at page 557 said:

"A joint tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint-tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the *jus accrescendi*. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund – losing, of course, at the same time, his own right of survivorship. Secondly, a joint tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested."

On the facts which were not in dispute in this case, only the last of the three ways enunciated by V.C. Page-Wood was relevant.

The undisputed facts were as follows. Malayan Credit House was originally owned by Malayan Credit Properties Pte. Ltd. a wholly owned subsidiary of the respondent company who were in sole occupation of the 7th Floor as tenant of its subsidiary. When the respondent company became tenant they expended about $250,000/– for "renovation".

In August 1979 the appellant company acquired a substantial interest in the respondent company and nominated four directors to sit on the Board of Directors including Mr. Jack Chia, the appellant company's Chairman. On August 11, 1979 the Board of Directors of the respondent company approved an arrangement for the appellant company to share the office premises of the 7th Floor, Malayan Credit House and to charge the appellant company for the area utilized by them. The Chairman's and the Board rooms were excluded. Subsequently, Mr. Jack Chia was elected Executive Chairman of the respondent company but at his own request without any remuneration for his services as Executive Chairman.

On August 31, 1979, Malayan Credit Properties (Pte.) Ltd. agreed to sell Malayan Credit House to United Overseas Land Ltd., completion to take place on November 30, 1979.

Pursuant to August 11, 1979 decision of the respondent company's Board, the appellant company moved into the 7th Floor in October 1979. It spent $64,000/– for the costs of office partitioning, renovation and installation of air-conditioning equipment in the Chairman's room and the Board room. It also paid the respondent company for furniture purchased from the respondent company. Mr. Jack Chia in his capacity as Executive Chairman of both companies occupied the Chairman's room and the Board room was used separately by both companies as and when needed by each of them.

In October 1979 the parties agreed to pay the monthly rent of $10,656 in proportion to the areas occupied by each and equally for the common area. The respondent company occupied an area of 3,273 sq.ft. and the appellant occupied an area of 2,306 sq.ft. The parties also agreed to pay the stamp fees for the lease and the survey fees for the plans required for the lease in proportion corresponding to the agreed apportionment of the rent. After the lease was entered into the parties requested the lessor to render separate bills to each co-lessee in the same proportions and thereafter each party paid its agreed share of the rent directly to the lessor.

At a Board meeting of the respondent company on April 17, 1980 following on the disposal

by the appellant company of its substantial holdings the respondent company, Mr. Jack Chia and the three other directors nominated by the appellant company resigned from the Board of the respondent company with effect after the meeting. At that meeting Mr. Jack Chia proposed a reallocation of the proportionate rent but no decision was taken. At the next Board meeting the Board of the respondent company decided not to accede to Mr. Jack Chia's proposal.

On April 23, 1981 the respondent company gave notice to the appellant company to vacate the Chairman's room and the Board room not later than May 31, 1981. On June 1, 1981 the respondent company locked the doors of the Board room thereby denying the appellant company access to it and on the same day gave "final notice" to vacate the Chairman's room. Following correspondence between the parties' solicitors an agreement was reached to maintain the *status quo* pending the outcome of the present proceedings.

We were of the opinion, on the undisputed facts, that the legal joint tenancy had been severed so as to create a tenancy in common. But tenancy in common resembles joint tenancy in matters depending on unity of possession. The occupation is undivided and neither co-tenant can claim a separate part save by obtaining partition (see 24 *Halsbury's* Laws of England, 1st edn. para. 396).

In the present proceedings, the appellant company sought an order for equal partition or for sale with equal division of the net proceeds of sale. In the Court below the application was dismissed but on appeal we ordered that the leasehold premises be sold with liberty to both parties to bid in such sale and that the net proceeds be divided equally. We were of the opinion that having regard to the differences between the parties and the fact that each has an equal right to all parts of the 7th Floor and neither may lawfully exclude the other from any part thereof, the *status quo* could not be maintained indefinitely and that it was necessary and expedient for the court to order a sale in the exercise of its power under paragraph 3 of the First Schedule to the Supreme Court of Judicature Act (Cap. 15) which reads:

"Additional Powers of the High Court

3. Power to direct a sale instead of partition in any action for partition of land, and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions".

For these reasons, we allowed the appeal.

Appeal allowed.

Solicitors: *Allen & Gledhill; Cooma Lau Loh & Karthigesu.*

LILY ISKANDAR & ANOR. v. BONARDY LEO & ORS.

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Thean JJ.) September 5, 1985]

[Singapore – Civil Appeal No. 21 of 1983]

Probate & Administration – Will – Granting of probate – Indonesian deceased with immovables and movables in Singapore – Pending suit in Indonesia regarding respondents' claim to a legitime portion – Question of probate adjourned until final determination – Whether High Court has jurisdiction to make grant of probate limited only to specific property – Probate and Administration Act (Cap. 23), s. 26.

Jurisdiction – Probate – Whether High Court has power to grant limited probate – Scope of Probate and Administration Act (Cap. 23), s. 26.

The deceased, Lugito, died in Indonesia on November 21, 1978 and at the date of his death was domiciled in Indonesia. He left behind eight children – three children by one Madam Wong, who were the respondents and five children by Lily Iskandar, the first appellant. The second appellant was one of the five children. Madam Wong, who predeceased the deceased, having died on May 8, 1976. The first appellant died on September 17, 1983.

Prior to his death the deceased on November 27, 1975 made a will in Singapore. Soon after the death of the deceased, proceedings were commenced in Indonesia by the first appellant and her children and also by the respondents. The matters in dispute reached the Supreme Court of Indonesia which gave its judgment in June 1981.

In Singapore the appellants on December 28, 1978 filed a petition praying for probate of the will in respect of the immovables and the movables in Singapore. The defendants opposed the granting of probate in respect of the movables.

This was an appeal against the decision of Chua J. who granted probate of the will to the appellants limited to the immovables and letters of administration *pendente lite* limited to the movables in Singapore to such person as the parties may agree and in default of agreement to such person as the Court may appoint and such person was to hold office for a specified period to be agreed between the parties and in default of agreement to be determined by court and the administrator so appointed was empowered to get in all